AWARD

of

BOARD OF ARBITRATION

established under
July 17, 1952 arbitration agreement

in accordance with
AGREEMENTS of MAY 23, 1952

with

ENGINEERS - FIREMEN - CONDUCTORS

on the matter of

MORE THAN ONE CLASS OF ROAD SERVICE

Washington, D. C.
December 3, 1952

BEFORE THE NATIONAL MEDIATION BOARD

BOARD OF ARBITRATION

In the Matter of:	)	
	)	
A DISPUTE ON "MORE THAN ONE CLASS OF ROAD SERVICE" BETWEEN THE CARRIERS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND CERTAIN EMPLOYES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AND ORDER OF RAILWAY CONDUCTORS.	)	N.M.B. Cases Nos. A-3437, A-3546
	)	Arbitration No. 168

By Arbitration Agreement dated July 17, 1952, the Class I carriers of the United States as represented by the Eastern, Western and Southeastern Carriers' Conference Committees (hereinafter sometimes referred to as the Carriers) and their employees represented by the Brotherhood of Locomotive Engineers (hereinafter sometimes referred to as the Engineers), the Brotherhood of Locomotive Firemen and Enginemen (sometimes hereinafter referred to as Firemen) and the Order of Railway Conductors (sometimes hereinafter referred to as the Conductors), submitted to this Arbitration Board for decision the disputes between them as to the rule to apply to road employees performing More than One Class of Road Service.

The Agreement further provided that "the arbitrators shall have the right to consider whether or not any rule covering More Than One Class of Road Service should be granted, and if so, the

language of such rule." It further provided that each party shall designate the exact questions, conditions or issues relating to such rule which it desires to submit to arbitration, and same shall constitute the questions to be submitted to arbitration.

The Agreement further provided that the "award of the consolidated board shall become effective sixty days after the date on which said award is filed except on such carriers as may elect to preserve existing rules or practices in the premises as to any organization involved and so notify the authorized employee representatives on or before thirty days after the date on which said such award is filed."

Pursuant to the Arbitration Agreement, Guy L. Brown, William C. Lash, and W. D. Johnson, were designated arbitrators for the Employees, and F. J. Goebel, D. P. Loomis and F. K. Day. Jr., were designated arbitrators for the Carriers. The said Employees' and Carriers' arbitrators, in due course, selected Paul N. Guthrie, William E. Simkin and A. Langley Coffey as the three neutral arbitrators.

The nine arbitrators convened in Washington, D. C., on October 21, 1952 and organized themselves into a statutory board of arbitration. Paul N. Guthrie was selected as Chairman of the Board.

Hearings before the Board began on October 21, 1952 and concluded on November 6, 1952. By agreement of the parties the time for making and filing the Board's award was extended to December 15, 1952.

J U R I S D I C T I O N

Counsel for the three organizations contended that the power of this Board to make an award of a new rule involving the performance of More than One Class of Road Service by road employees was limited by the so-called moratorium provisions of the agreements of the organizations with the Carriers dated May 23, 1952.

After careful consideration of all of the circumstances this Board is of the opinion that Article 5 of the Engineers' Agreements of May 23, 1952, Article 5 of the Firemen's Agreements of May 23, 1952 and Article 9 of the Conductors' Agreements of May 23, 1952, are not to be construed as being in any way limited by the so-called moratorium provisions of those agreements. The evidence clearly shows that the parties intended to empower this Arbitration Board to decide if any rule should be granted changing the present More Than One Class of Road Service Rule and the practices thereunder, and if so, the power to award such rule as it deemed appropriate and the language thereof. In any event, it is clear that the Arbitration Agreement of July 17, 1952, settled the matter.

Paragraph 4 of that agreement reads as follows:

> "(4) The award of the consolidated board shall become effective sixty days after the date on which such award is filed except on such carriers as may elect to preserve existing rules or practices in the premises as to any organization involved and so notify the authorized employe representatives on or before thirty days after the date on which such award is filed; and rules in the premises in effect on and after the effective date of the award shall continue in effect until September 30, 1953, and thereafter subject to notices served in accordance with Section 6 of the Railway Labor Act, as amended."

Under these circumstances, this Board finds that its jurisdiction to decide the questions before it is not limited by the moratorium provisions of the Agreements of May 23, 1952.

A W A R D

QUESTION NO. 1: "Should any rule covering More Than One Class of Road Service be granted?"

The Board finds there is no controversy over this question. All parties to this proceeding now agree, as a matter of record, that there should be a rule.

QUESTION NO. 2: "What shall be the language of the rule?"

Subject to and in keeping with the provisions of Paragraph 4 of the Arbitration Agreement of July 17, 1952, the Board finds that a new rule should be awarded as follows:

I. More Than One Class of Road Service Rule:

Road employees (engineers, firemen and helpers, conductors and trainmen) employed in any class of road service may be required to perform two or more classes of road service in a day or trip subject to the following terms and conditions:

A. Payment:

1. Except as qualified by A-2 below, payment for the entire service shall be made at the highest rate applicable to any class of service performed, the overtime basis for the rate paid to apply for the entire trip. Not less than a minimum day will be paid for the combined service.

When two or more locomotives of different weight on drivers are used during a trip or day's work, the highest rate applicable to any engine used shall be paid to the engineer, fireman and/or helper for the entire day or trip.

2. Road employees (engineers, firemen and helpers, conductors and trainmen) in through freight and passenger service only shall receive full payment for the regular day or trip based on miles or hours applicable to the regular day or trip plus extra compensation on a minute basis for all additional time required in the other class of road service.

   The rate paid both for the regular trip and for the additional time shall be the highest rate applicable to any class of service performed during the entire day or trip.

   When two or more locomotives of different weight on drivers are used during a trip or day's work, the highest rate applicable to any engine shall be paid to the engineer, fireman and/or helper for the entire day or trip.

   Overtime rate shall apply to the extra compensation only to the extent that the additional service results in overtime for the entire day or trip or adds to overtime otherwise payable for hours required for the regular trip.

EXAMPLES FOR THE APPLICATION OF THIS PARAGRAPH A-2 ARE:

(a) An employee in through freight service on a run of 100 miles is on duty a spread of 8 hours, including 2 hours of another class of road service -- Employee will be paid 100 miles or 8 hours at pro rata rate for the trip plus 2 hours at pro rata rate for the other class of road service, both payments to be at the highest rate applicable to any class of service performed.

(b) An employee in through freight service on a run of 100 miles is on duty a spread of 9 hours, including 2 hours of another class of road service -- Employee will be paid 100 miles or 8 hours at pro rata rate for the trip plus 1 hour at pro rata rate and 1 hour at time and one-half for the other class of road service, both payments to be at the highest rate applicable to any class of service performed.

(c) An employee in through freight service on a run of 100 miles is on duty a spread of 10 hours, including 2 hours of another class of road service -- Employee will be paid 100 miles or 8 hours at pro rata rate for the trip plus 2 hours

at time and one-half for the other class of road service, both payments to be at the highest rate applicable to any class of service performed.

(d) An employee in through freight service on a run of 100 miles is on duty a spread of 12 hours, including 2 hours of another class of road service -- Employee will be paid 100 miles or 8 hours at pro rata rate plus 2 hours at time and one-half for the trip plus 2 hours at time and one-half for the other class of road service, both payments to be at the highest rate applicable to any class of service performed.

(e) An employee in through freight service on a run of 150 miles is on duty a spread of 10 hours, including 2 hours of another class of road service -- Employee will be paid 150 miles or 12 hours at pro rata rate for the trip, plus 2 hours at pro rata rate for the other class of road service, both payments to be at the highest rate applicable to any class of service performed.

B. This rule applies to:

1. Unassigned and/or assigned road service.

2. Another class of road service regardless of when notified, whether at time called, at the outset of, or during the tour of duty.

3. Passenger service, except that helper or pusher service not a part of the regular passenger assignment, or wreck or work train service, should not be required except in emergencies.

C. This rule does not involve the combining of road with yard service nor modify or set aside:

1. Lap-back or side trip rules except when a combination of service includes work, wreck, helper or pusher service and such movements are made in the performance of work, wreck, helper or pusher service.

2. Conversion rules.

3. Terminal switching and/or special terminal allowance rules.

II. Wage Stabilization Finding and Certification:

This Board specifically finds and certifies that the award herein rendered is consistent with the standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies.

Award rendered and filed in the Office of the Clerk of the United States District Court for the District of Columbia, this 3rd day of December, 1952.

BOARD OF ARBITRATION

Paul N. Guthrie,
Neutral Arbitrator and Chairman

William E. Simkin, Neutral Arbitrator

A. Langley Coffey, Neutral Arbitrator
(Dissenting on the awarded rule)

F. J. Goebel, Carriers' Arbitrator

D. P. Loomis, Carriers' Arbitrator

F.K.Day, Jr., Carriers' Arbitrator

Guy L. Brown, Employes' Arbitrator
(Dissenting on the awarded rule)

Wm. C. Lash, Employes' Arbitrator
(Dissenting on the awarded rule)

W. D. Johnson, Employes' Arbitrator
(Dissenting on the awarded rule)

United States of America)
(SS:
District of Columbia)

On the 3rd day of December, 1952, before the undersigned Notary Public in and for the District of Columbia, appeared Paul N. Guthrie, William E. Simkin, A. Langley Coffey, F. J. Goebel, D. P. Loomis, F. K. Day, Jr., Guy L. Brown, William C. Lash, and W. D. Johnson, to me known to be the persons described as Arbitrators in the foregoing Award, who executed the same, and duly acknowledged execution thereof for the use and purposes therein expressed.

Kenneth K. Johnson
Notary Public.

C E R T I F I C A T I O N

The undersigned Members of the Board of Arbitration in the foregoing arbitration hereby certify that the original Award of said Board, together with a copy of the transcript of testimony and exhibits introduced during the hearing conducted by said Board, are herewith filed with the Clerk of the United States District Court in and for the District of Columbia.

Dated this 3rd day of December, 1952.

Paul N. Guthrie,
Neutral Arbitrator and Chairman

William E. Simkin, Neutral Arbitrator

A. Langley Coffey, Neutral Arbitrator

F. J. Goebel, Carriers' Arbitrator

D. P. Loomis, Carriers' Arbitrator

F.K.Day, Jr., Carriers' Arbitrator

Guy L. Brown, Employes' Arbitrator

Wm. C. Lash, Employes' Arbitrator

W. D. Johnson, Employes' Arbitrator

STATEMENT OF GROUNDS FOR DISSENT BY NEUTRAL MEMBER

I cannot vote for the majority award, although I think it accommodates both parties. The Employes receive in part extra pay for what they contend is extra service. The Carriers are relieved of locally negotiated rules and separate agreements which conflict with the standard "More Than One Class of Road Service" rule.

The Employes were granted something for which they did not seriously contend on the record and at a price I don't think they were willing to pay. The Carriers receive more than they urged by their oral submission, but not without paying a price which I am sure they find distasteful. To gain the advantage, if such it be, the Carriers had to retreat from the time-honored principle and, on certain properties the existing practice, that performance of the combined service is paid for once under the "basic day" rule.

At the hearing the Employes' real position was "that the Carriers take nothing by this case." The Organizations assumed a defensive position throughout the oral presentation, pleading that the Board maintain the "status quo." Because the Organizations introduced proof to show that they would suffer a loss of compensation now enjoyed under the "basic day" rule if the Carriers' position were fully sustained, it now appears they

invited a result contrary to the position they state on the record and at variance, I think, with their real concept of the equities of the case.

The Carriers indicated at the hearing their principal position to be that in the interest of uniformity and because of National Railroad Adjustment Board awards which the Carriers held to be erroneous, they should be relieved of all "escape agreements" and schedule rules in conflict with the standard "More Than One Class of Service" rule where the same were adopted after August 1, 1939. Also, there should be clarification of the rule which has been in existence since 1919, but not necessarily a new rule. The subject award is not limited to a cut-off date, so the Carriers profit in this connection beyond their actual expectations, and in fact get more than they asked on the record -- but at a price which repudiates a principle they had advocated for 33 years.

So, in my opinion, both parties have lost ground they did not deserve to lose by this arbitration, although each has been compensated in a measure. That is what makes this, in my opinion, an accommodation award rather than a decision on the merits.

Let there be no mistake about it, though, the accommodation features of the award do not result from attempt of the other neutral members of the Board to accommodate one or both

parties. They proposed and gained support for a rule which they deemed fair and equitable, and from their approach to the problem they can find some support in the record for their point of view. They hold out high hopes that the award will have general acceptance by the parties and will put at rest troublesome and vexatious operating problems with which the industry has been plagued growing out of use and application of the "More Than One Class of Road Service" rule. If the award accomplishes those high purposes, one of the ends of arbitration has been gained.

But the larger question remains "What is the role of a statutory board of arbitration?" Granted that one of its purposes is the adjustment and settlement of disputes in acceptable fashion, what right does it have to grant more than that for which the parties themselves argue and support by their proof in the record? The inveterate rule should be to take nothing from the parties which they do not voluntarily put in issue, nor to give them more than that for which they unequivocally contend in making their case.

This Board could not see a distinction which should be made between what it had been empowered to award and the purpose to be served by the record made on the hearing. It fell into error, in my opinion, by regarding the submission agreement as a "blank check." If the parties had handed us their submission agreement and said, "If you find a rule is necessary, write one,"

thereupon leaving us to our own resources, they would have deserved just what the award gives them. It is my studied opinion, however, that they deserved a better fate here.

Pursuant to the submission agreement, the parties went to hearing and spent days in presenting evidence and argument in keeping with their respective theories of the case. It is my view that they should have been held to their statement of positions made on the record, the submission agreement notwithstanding.

On the record before us I don't think the Organizations deserved to lose the benefit of all escape agreements of record and other rules in the separate railroad schedules fairly bargained after adoption of the standard "More Than One Class of Road Service" rule and directly bearing thereon. Where the majority found justification for eliminating those rules back of August 1, 1939, is something that was never made clear to me.

On the other hand, I don't think the Carriers deserve to be put in the position that because they came to arbitration to get relief from what they deemed to be an inequitable and unconscionable application of a rule for combining service upon payment of the highest rate, it was necessary to bail out by granting to the Employes additional compensation for which the Employes were contending, only indirectly if at all. If the Organizations wanted an arbitrary or some other form of compensation for which

the rule did not provide, it was their duty to say so on the record. They owed it to the Board to go even further and specify the amount and offer proof in justification of that which was proposed.

As it now stands, from my point of view, the award compromises the position of both the Carriers and the Organizations by eliminating rules before and after 1939 and giving the Employes money to compensate therefor.

It was and is my position that the granting or withholding of an arbitrary or other compensatory features of the new rule constituted something that should stand or fall on its own weight. It should not be an additional price for the Carriers to pay, in a proceedings where related compensatory rules are not at issue, so as to have clarification here of a rule once bargained.

On the other hand, I do not feel that the Carriers were entitled to "escape" from the consequences of more of the "escape" agreements of record than possibly those involving two carriers. They were entitled to get out of this proceedings a rule that would serve as a reliable guide for combining service in the future, and this without any additional compensation not already provided for by the rules, schedules, or separate agreements on the individual properties.

Except for the foregoing reservations, I could have conscientiously signed the subject award. As it is, I have to respectfully dissent.

This dissent and expression of my views takes nothing away from the awarded rule, for what is one man's opinion against the opinion of a majority which had equal, if not better, reasons for parting company with me?

The majority conscientiously believe, after weeks of real study and effort, that they have found the answer to more than thirty years of growing dissatisfaction with a rule which all parties concede needed to be revised or rewritten. The parties can make the new rule work if they will, and it is most important that they undertake to do so now that it has been awarded. Accordingly, I hope to accomplish nothing more by stating my position than to explain the reasons for my dissent.

Respectfully submitted,

A. Langley Coffey

A. Langley Coffey, Neutral Arbitrator

December 3, 1952

Dissenting Opinion of Labor Members

A proper respect for the procedure of voluntary arbitration as a means of settling disputes between railroads and their organized employees requires that the undersigned labor members of the Board record briefly their principal reasons for dissenting from the Award of a majority of this Board.

The labor members were willing to join in awarding a rule to govern the performance of more than one class of road service and the compensation to be paid therefor. They could not conscientiously subscribe to the rule awarded by the majority, however desirable unanimity may be, for three major and to them completely persuasive reasons.

First, the additional compensation awarded fails to provide for a reasonable and deterring minimum additional allowance. Such a minimum additional payment is essential if the incentive features of the dual basis of pay are to be in the main preserved and kept effective. The underlying theory of the incentive system requires some realistic deterrent upon the carriers' interruption of road crews in the performance of their primary task of producing miles of transportation. The principle of minimum special allowances usually fixed at pay for one or more hours has been well established for operating employees of the railroad industry by a multitude of individual agreements. These not only apply in respect to a variety of possible combinations of road service,

but as well govern compensation for all sorts of special services performed in addition to normal road crew service. That principle should have been applied, not abandoned, in this majority award.

Second, there is no justification in sound theory for exempting local freight crews from receipt of the modest additional allowance provided in Section A2 of the award. True, most local freight crews required to perform additional road service of another class will receive compensation at the overtime rate for the time spent in its performance, and they would thus be paid substantially as if included under the provisions of Section A2. But the many local freight crews who normally perform their service at speeds greater than the established 12-1/2 miles per hour speed basis are the very local freight crews most likely to be inducted into work train and other additional classes of road service. These speedier local freight crews will not receive under the award any additional compensation for performing additional service of another class unless and until road overtime accrues to them, and then only to that extent. Patently, under the award there will be occasions when local freight crews who are interrupted to perform extra service for the carrier will receive less total compensation than through freight crews paid under Section A2 in virtually identical circumstances. The labor members cannot willingly condone this discrimination against local freight crews.

Third, it is not possible from this majority award, even with the aid of the record upon which it is based, to know with any degree of certainty what other rules, special agreements, and practices are adversely affected or otherwise modified by the award, nor the extent of the deletions or dilutions. The carriers steadfastly declined to accede to the request of the organizations that they place of record the information which might have enabled the Board to avoid these uncertainties concerning the effect of its award. The majority award furnishes no reliable guides to the solution of this maze of potential and difficult issues, and in the state of the record before us it is a fair prediction that this award will give rise to quite as much uncertainty and controversy as the carriers have complained arose under the so-called standard rule.

The labor members seriously regret the inability of this Board to arrive at a unanimous award and their inability to join in the rule awarded by the majority of the Board.

Guy L. Brown

William C. Lash

W. D. Johnson